

August 12, 2019

Mayor Chris Spearman
City of Lethbridge
Traditional territory of the Siksikaitapii/Blackfoot Confederacy
mayor@lethbridge.ca

Members of City Council
City of Lethbridge
Traditional territory of the Siksikaitapii/Blackfoot Confederacy
council@lethbridge.ca

Dear Mayor Spearman and Lethbridge City Council,

Re: *Lethbridge City Motion on Supervised Consumption Sites*

We write to Lethbridge Mayor and Council regarding a notice of motion that you are scheduled to consider at an upcoming Council meeting on August 29, 2019. The motion instructs Council to call on the Provincial Government to limit the distribution of harm reduction supplies (i.e. sterile syringes) at North America's busiest supervised consumption site (SCS) and, moreover, to freeze funding to that site, potentially leading to its closure.

Pivot Legal Society is a human rights legal organization based in Vancouver, BC. For nearly 20 years, Pivot has worked alongside communities throughout BC to challenge laws and policies that contribute to stigma and threaten the *Charter* Rights of people who use drugs.

In recent years, our work has expanded to litigate on issues across Canada, including a legal challenge we undertook in December 2018, wherein we argued that allowing community groups extraordinary consultation privileges in the approval process for supervised consumption sites (SCSs) would create new barriers to supervised consumption services. The Federal Court of Canada agreed, and the Constitutionally-protected right to health services for people who use drugs rightly took precedence.¹

In the midst of a declared public health emergency, where the most recent data supplied by Alberta Health indicates that 655 people died due to opioid poisoning in 2017,³ while nearly 2 people die each

¹ Canadian Drug Policy Coalition, *Canadian Drug Policy Coalition and Pivot Legal Society successfully defend supervised consumption at Federal Court of Canada*, 28 Feb 2019, available at: <https://www.drugpolicy.ca/wp-content/uploads/2019/07/AMSISE-Win.pdf>

³ Alberta Health, *Opioid-related deaths in Alberta in 2017: Review of medical examiner data*, July 2019, available at: <https://open.alberta.ca/dataset/f9912915-bd4f-4b57-93bf-2a963cb99038/resource/a2857fb6-6663-491c-b9df-686e348bb456/download/070519-me-chart-review-final.pdf>

day in Alberta due to an increasingly toxic drug supply,⁴ it is unacceptable that the City of Lethbridge would consider a motion so dangerous and so markedly at odds with prevailing public health research and epidemiological evidence. If passed, the motion would directly jeopardize the lives of people who use drugs. It would impinge on the Federal Court of Canada’s recent findings upholding supervised consumption and public health.⁵ Arguably, it would violate the life, liberty, and security of people who use drugs contrary to section 7 of the *Canadian Charter of Rights and Freedoms*.

The motion undermines public health and puts the lives of people who use drugs at risk of death and disease

Evidence that SCSs save lives is incontrovertible. Nearly a decade ago the Supreme Court of Canada affirmed the life-saving services of Insite,⁶ and since then, epidemiological evidence in favour of SCSs has mounted exponentially.⁷ Governments at every level across the country are at this time changing laws and policies to actively promote a harm reduction approach. In 2017, for instance, the Federal Government amended the *Controlled Drugs and Substances Act* with a specific aim to improve access to supervised consumption, eliminating the majority of criteria needed to set up a site.⁸

In May 2017, the Alberta Minister of Health established the Opioid Emergency Response Commission (“OERC”) to support the Government of Alberta’s response to the opioid crisis. The OERC specifically recommended that the Minister of Health direct the department of health to undertake efforts to facilitate access to overdose prevention sites in Alberta. The OERC specifically noted the need for SCS services in Lethbridge, and recommended that the Minister of Health provide operational funding for the single SCS in Lethbridge. The motion being considered by Council would function at odds with the recommendations set forth by the OERC.

The benefits of supervised consumption are not limited to facilities located in Vancouver or other major metropolises—one need only contemplate data accrued at the very SCS under scrutiny in Council’s motion. Since January 2019, ARCHES’ SCS has averaged close to 700 visits per day. It is currently the largest and busiest SCS in North America.⁹ If closed, there is no question that people in Southern Alberta would needlessly die. A recent study by the BC Centre for Disease Control affirmed that overdose deaths in the Province between April 2016 and December 2017 would be at least twice as high without

⁴ Ian Campbell, “Opioid overdose deaths continue to rise across Alberta,” *Edmonton City News*, 1 Feb 2019, available at: <https://edmonton.citynews.ca/2019/02/01/opioid-overdose-deaths-continue-to-rise-across-alberta/>

⁵ *Chinatown & Area Business Association v Canada (Attorney General)*, 2019 FC 236.

⁶ *Canada (Attorney General) v PHS Community Services Society*, 2011 SCC 44 [“PHS”] at para 19: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7960/index.do>

⁷ Thomas Kerr et al., “Supervised injection facilities in Canada: past, present, and future,” *Harm Reduction Journal* 14 (18 May 2017).

⁸ Bill C-37: *An Act to amend the Controlled Drugs and Substances Act and to make related amendments to other Acts*, 2017, c. 7.

⁹ Knight, Demi, “Usage numbers remain high at Lethbridge supervised consumption site,” *Global News*, 21 May 2019, available at: <https://globalnews.ca/news/5299968/usage-numbers-high-lethbridge-supervised-consumption-site/>

emergency harm reduction services, including those offered at overdose prevention sites and supervised consumption sites.¹⁰

The motion threatens the Charter rights of people who use drugs

In addition to working at cross-purposes with public health, the motion also runs afoul of various court decisions and risks violating the section 7 *Charter* rights of people who use drugs.

This year, the Federal Court of Canada dismissed applications brought by Edmonton’s Chinatown and Area Business Association to shut down three SCSs in the downtown core of Edmonton. The health, safety, and *Charter* rights of people who use drugs, the Court found, far outweigh any entitlement a community group has to weigh in or be consulted on decisions to establish SCSs:

“The principal and mandatory focus of the legislation [allowing SCSs to be set up] is on the question of whether an exemption would provide public health benefits. *Any consideration of negative impacts on the local community is secondary and discretionary*” [Emphasis added].¹¹

If Council passes this motion, it will frustrate the federal Minister of Health’s decision to approve ARCHES’ site—a decision that itself was premised on a legislative requirement to prioritize public health over the input of any community group. This requirement—that the Minister subordinate public opinion to public health when deciding whether to approve an SCS—was enacted to protect the right of people who use drugs *not* to be unconstitutionally deprived of access to the health services afforded at SCSs. It flows from the Supreme Court of Canada’s landmark finding in 2011 that the Minister of Health’s decision to deny an operating extension to Insite unconstitutionally violated drug users’ section 7 rights:

“[The limit on this SCS] is also grossly disproportionate: the potential denial of health services and the correlative increase in the risk of death and disease to injection drug users outweigh any benefit that might be derived from maintaining an absolute prohibition on possession of illegal drugs on Insite’s premises.”¹²

The motion before Lethbridge City Council risks a similar violation of the life, liberty, and security rights of people who use drugs. It could, for instance, lead to the closure (however temporary) of a facility proven to save lives. Similar to the Minister’s unconstitutional decision in *Insite*, the motion’s potential to deny health services in Lethbridge (whether by thwarting access to harm reduction supplies or by cutting funding to the site entirely) puts people who use drugs at risk of death and disease and thus directly engages their rights under the *Charter*.

¹⁰ BC Centre for Disease Control, *Overdose deaths would be at least twice as high without emergency harm reduction and treatment response*, 5 June 2019, available at: <https://science.ubc.ca/news/overdose-deaths-would-be-least-twice-high-without-emergency-harm-reduction>

For full report, see: Michael A. Irvine et al., “Modelling the combined impact of interventions in averting deaths during a synthetic-opioid overdose epidemic” *Society for the Study of Addiction* 9 (5 June 2019).

¹¹ *Supra* note 5 at para. 100.

¹² *PHS* at para 136.

We trust that the Province, having been vocal in its support of existing SCSs and evidence-based approaches to drug use, will not cede Council's request by directing either an anti-harm reduction policy change or a cut to funding. However, we urge council to reject the motion at first instance, which, whether Council realizes it or not, irrevocably signals to people who use drugs that they are not welcome in the Lethbridge community.

We call on council to keep in step with established best practices in public health and safety and reject this motion.

Sincerely,
Pivot Legal Society

Caitlin Shane
Staff Lawyer, Drug Policy

CC: Minister Tyler Shandro, Ministry of Health
Associate Minister Jason Luan, Mental Health and Addiction
Dr. Deena Hinshaw, Chief Medical Officer of Health